IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10634 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S SHREEJI INDUSTRIES - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DN PANDYA for Petitioner(s) : 1,
MR NEERAJ SONI A.G.P. for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/06/2007

ORAL JUDGMENT

1. **RULE**. Mr. Soni learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective parties the matter

is taken up for final hearing today itself.

2. In this petition, the petitioner has made a grievance that simply because of the change in the name of partnership firm, the respondent has taken a view that the petitioner is required to pay necessary stamp duty under the Bombay Stamp Act and had passed order dated 10th June, 2003. The Deputy Collector i.e., respondent no. 2 has directed the petitioner to pay deficit Court fees of Rs.34,718=00 together with penalty of Rs.5,000=00, in all Rs.39,718=00, within 90 days of the date of the order, failing which, 15% interest would be charged.

3. Against the said order, the petitioner approached the higher authority under the provisions of Section 52(1) of the Bombay Stamp Act, by filing appeal. However, by order dated 28th September, 2006, the appeal was dismissed on the ground of limitation. The petitioner was informed that to challenge the order of respondent no. 2, dated 10th June, 2003, the petitioner was required to deposit 25% of the deficit stamp duty on or before 9th August, 2003. However, the deposit was made on 7th September, 2003 and the appeal was filed on 9th September, 2003. Hence, it was beyond the period of limitation. Hence, it was not maintainable.

4. The petitioner has challenged this order along with the order of respondent no. 2. Upon hearing Mr. D. N. Pandya learned advocate for the petitioner, and Mr. Soni learned A.G.P., for the respondents, and having perused the record of this petition, it appears that the petitioner was prevented by justifiable reasons for not depositing the requisite fees and not filing appeal within prescribed period of limitation. In view of the same, delay in filing appeal is required to be condoned and it is hereby condoned. However, since the matter is not dealt with by the appellate authority on merits it is required to be remitted to the appellate authority for its consideration on merits. Hence, the matter is ordered to be forwarded to respondent no. 1 for consideration of merits. Respondent no. 1 shall intimate to the petitioner the date of hearing and after granting adequate opportunity of hearing, take appropriate decision in accordance with law. The decision that may be taken by respondent no. 1 shall be intimated to the petitioner within ten days of the date of the decision. The exercise to be completed on or before 30th September, 2007.

5. In view of the aforesaid the petition is partly

allowed. The impugned order at annexure - A is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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